



# Bill 4

## Legislative Council Staff *Nonpartisan Services for Colorado's Legislature*

# Fiscal Note

**Drafting Number:** LLS 22-0141  
**Prime Sponsors:**

**Date:** October 25, 2021  
**Bill Status:** Bill Request  
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**Bill Topic:** **MODIFICATIONS TO NOT GUILTY BY REASON OF INSANITY**

**Summary of  
Fiscal Impact:**

- |   |  |
|---|--|
| <input type="checkbox"/> State Revenue                | <input type="checkbox"/> TABOR Refund                |
| <input checked="" type="checkbox"/> State Expenditure | <input checked="" type="checkbox"/> Local Government |
| <input type="checkbox"/> State Transfer               | <input type="checkbox"/> Statutory Public Entity     |

The bill requires the court to evaluate a defendant found not guilty for reason of insanity to determine if they are eligible for community placement, sets a maximum limit of confinement, and allows a court to civilly commit a defendant to the Department of Human Services. The bill will increase state and local expenditures on an ongoing basis.

**Appropriation  
Summary:** For FY 2022-23, the bill requires an appropriation of \$19.3 million to the Department of Human Services.

**Fiscal Note  
Status:** The fiscal note reflects the draft bill requested by the Legislative Oversight Committee Concerning the Treatment of Persons with Mental Health Disorders in the Criminal and Juvenile Justice Systems.

**Table 1  
State Fiscal Impacts Under Bill 4**

		Budget Year FY 2022-23	Out Year FY 2023-24
Revenue		-	-
Expenditures	General Fund	\$19,324,711	\$22,777,949
	Centrally Appropriated	\$271,995	\$555,699
	<b>Total Costs</b>	<b>\$19,596,706</b>	<b>\$23,333,648</b>
	<b>Total FTE</b>	<b>15.5 FTE</b>	<b>31.7 FTE</b>
Transfers		-	-
TABOR Refund		-	-

## **Summary of Legislation**

Under current law, if a jury finds a defendant not guilty by reason of insanity, the court commits the defendant to the Department of Human Services (DHS) until the defendant is eligible for release. This bill requires the court to order an evaluation of the defendant to determine if the patient meets the criteria for inpatient hospitalization or is eligible for conditional release in the community. The evaluation must be done in 30 days. Ten days after receiving the evaluation, the court must hold a hearing to order inpatient hospitalization or to release the defendant for community placement or conditional release. If community placement is ordered, the court must set the conditions for the release and the DHS has the same obligations as if the defendant had been temporarily removed for treatment and rehabilitation.

The bill also sets maximum limits on how long a defendant found not guilty by reason of insanity can be confined. A defendant cannot remain confined for a period in excess of the maximum term of confinement that could be imposed for the most serious offense, reduced by 30 percent for a misdemeanor and 50 percent for a felony offense; however, this provision does not apply to defendants acquitted of a life sentence. Upon the conclusion of the maximum period, the court may stay the termination of confinement for 21 days to have the DHS determine if the defendant meets the requirement for civil certification. If the court finds the requirements for civil certification have been established by clear and convincing evidence, the court shall order the defendant committed to the DHS.

Finally, the bill lists what should be included in a release examination report which is produced when a defendant is released from the DHS commitment.

## **Assumptions**

The fiscal note assumes that the DHS receives 10 defendants found not guilty for reason of insanity per year. In addition, the fiscal note assumes that there are currently 300 defendants in the care of DHS that have reached the maximum limit of confinement under the bill and will qualify for civil commitment under the bill; of those defendants, it is assumed 25 percent will qualify for inpatient services and the remainder will qualify for outpatient.

## **State Expenditures**

State General Fund expenditures within the DHS will increase by \$19.6 million FY 2022-23 and \$23.3 million in FY 2023-24 as shown in Table 2 and described below. In addition, workload to the Judicial Department will increase, as described below.

**Table 2  
Expenditures Under Bill 4**

<b>Cost Components</b>	<b>FY 2022-23</b>	<b>FY 2023-24</b>
<b>Department of Human Services – Case Management and Competency Evaluations</b>		
Personal Services	\$130,682	\$313,634
Operating Expenses	\$2,430	\$4,995
Capital Outlay Costs	\$24,800	-
Centrally Appropriated Costs <sup>1</sup>	\$26,767	\$65,240
FTE – Personal Services	1.5 FTE	3.7 FTE
<b>DHS Subtotal</b>	<b>\$184,679</b>	<b>\$383,869</b>
<b>Department of Human Services – Civil Commitments</b>		
Inpatient State Beds (High and Medium Needs)	\$2,934,600	\$5,869,200
Contract Beds (Low Needs)	\$3,504,000	\$7,008,000
Fort Logan Renovation	\$3,000,000	\$3,000,000
<b>DHS Subtotal</b>	<b>\$9,438,600</b>	<b>\$15,877,200</b>
<b>Department of Human Services – Outpatient Program</b>		
Personal Services	\$1,115,859	\$2,231,720
Operating Expenses	\$22,140	\$37,800
Capital Outlay Costs	\$173,600	-
Wraparound Services	\$904,000	\$1,800,000
Computer Programming	\$7,500,000	\$2,500,000
Vehicle Lease	\$12,600	\$12,600
Centrally Appropriated Costs <sup>1</sup>	\$245,228	\$490,459
FTE – Personal Services	14.0 FTE	28.0 FTE
<b>Outpatient Program Subtotal</b>	<b>\$9,968,670</b>	<b>\$7,063,064</b>
<b>Total</b>	<b>\$19,596,706</b>	<b>\$23,333,648</b>
<b>Total FTE</b>	<b>15.5 FTE</b>	<b>31.7 FTE</b>

**Department of Human Services.** Starting in FY 2022-23, expenditures within the DHS will increase on an ongoing basis to provide case management services and competency evaluations; provide and build inpatient beds; and to develop an outpatient program. These costs are described in more detail below.

- **Case management.** The DHS will require 1.7 FTE to provide case management services to individuals found not guilty for reason of insanity and who are released to community placement. This assumes that 1 FTE can handle about 3 clients at one time and that 5 individuals will be released to community placement per year. Costs in FY 2022-23 are prorated for the General Fund pay date shift and a January 1, 2023 start date.

- **Evaluations.** The DHS will require 2.0 FTE psychologists to provide additional evaluations to individuals who are currently in the care of DHS and who will have reached their maximum confinement limit. Costs in FY 2022-23 are prorated for the General Fund pay date shift and a January 1, 2023 start date.
- **Civil commitment.** The bill establishes a court order for additional individuals to be committed to the care of DHS. Because the DHS lacks bed capacity, it will need to build additional beds. This analysis assumes that 16 state beds will be required for high- and medium-need individuals at a rate of \$1,005 per day and that an additional 16 beds for low-need individuals will be contracted out at a rate of \$1,200 per day. Costs in FY 2022-23 are prorated in half for a January 1, 2023, start date.

It is also assumed the DHS will renovate the Geriatrics Unit at the Fort Logan facility in order to house the additional beds at an estimated cost of \$6.0 million. Costs are divided into two fiscal years.

- **Outpatient program.** Currently, the DHS does not run an outpatient program for civil commitments. Because the bill allows the court to order outpatient services, and because community-partners within the DHS have the right to refuse the defendant, the fiscal note assumes the DHS will have to develop an outpatient service program to ensure defendant's right to the court ordered service. Costs assume that the Assertive Community Treatment model will be used and that the program will begin on January 1, 2023.

Estimated outpatient program costs include:

- A **staff** of 28.0 FTE to provide care to outpatient individuals. FTE amounts are based on an 8:1 staff to client ratio and include a supervisor, psychiatrists, case managers, health care professionals, and peer support specialists. Staff costs are prorated in FY 2022-23 for the General Fund pay date shift and a December 1 start date.
- **Wraparound services**, such as housing, medical, occupational, basic necessities, and guardianship at an estimated \$8,000 per patient.
- An independent **electronic health record system**, based on the cost for creating a similar system at the Mental Health Institutes.
- **Vehicle leases** at a ratio of 4 FTE to 1 vehicle at a rate of \$350 per month to visit committed individuals in the community.

**Judicial Department.** The bill will require the court to hold additional hearings and for court staff to do additional tracking of required evaluations and deadlines, setting additional hearings, entering additional data into the case management system, and processing additional forms. In addition, workload to independent Judicial Offices that represent indigent persons will increase to attend additional hearings. Due to the low number of cases where a defendant is found not guilty for reason of insanity, additional workload can be accomplished within existing appropriations.

**Centrally appropriated costs.** Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are shown in Table 2.

## **Local Government**

Workload for local district attorney offices will increase to attend and to prepare for additional hearings. District attorney offices are funded by the counties within the office's judicial district.

## **Technical Note**

Because the DHS must build both inpatient and outpatient services, the department cannot meet the deadlines for providing services in the bill. The fiscal note has assumed a timeline in which the department has adequate time to implement these services, which does not match timelines in the bill.

## **Effective Date**

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed.

## **State Appropriations**

In FY 2022-23, the bill requires a General Fund appropriation of \$19,324,711 and 15.5 FTE to the Department of Human Services.

## **State and Local Government Contacts**

Human Services  
Judicial

Information Technology  
Law